STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY HOLLANDER, JENNIFER HOLLANDER, JOHN MARX, JUDITH MARX BARRY FREUND, JUDITH FREUND, JEFFREY KAPLAN, and STEPHANIE KAPLAN,

Plaintiffs-Appellees,

v

MOUNTAIN GRAND LODGE & SPA, LLC, BOYNE USA, INC, and BOYNE REALTY RESORT SALES, LLC,

Defendants-Appellants,

and

G. LAMARR HOPE,

Defendant.

UNPUBLISHED
March 31, 2011

No. 294535
Oakland Circuit Court
LC No. 2009-101758-CB

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

PER CURIAM.

Defendants appeal by leave granted from the trial court's order denying the motion for change of venue. We reverse.

"An appellate court uses the clearly erroneous standard to review a trial court's ruling on a motion to change venue." *Brightwell v Fifth Third Bank*, 487 Mich 151, 156; 790 NW2d 591 (2010). However, issues of statutory interpretation present questions of law subject to review de novo. *Id*. The primary goal of statutory interpretation is to give effect to the intent of the Legislature as expressed in the statute. *Id*. at 157. "In Michigan, plaintiffs carry the burden of establishing the propriety of their venue choice, and the resolution of a venue dispute generally occurs before meaningful discovery has occurred." *Gross v General Motors Corp*, 448 Mich 147, 155-156; 528 NW2d 707 (1995). The venue rules are designed to ensure that proceedings are held in the most convenient forum. *Id*. at 155. The primary goal is to minimize the costs of litigation by reducing the burdens on the parties and by considering the strains on the system as a whole. *Id*. To survive a challenge to the propriety of venue, the plaintiff must present some

credible factual evidence that the venue selected is proper. *Provider Creditors Comm v United American Health Care Corp*, 275 Mich App 90, 94; 738 NW2d 770 (2007). The choice of venue must be based on facts, not mere speculation. *Id*.

The parties do not dispute that, pursuant to MCL 600.1641(2), venue is governed by MCL 600.1629.[1] MCL 600.1629 provides, in relevant part:

> (1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:
>
> (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
>
> (*i*) The defendant resides, has a place of business, or conducts business in that county.
>
> (*ii*) The corporate registered office of a defendant is located in that county.

Before 1996, MCL 600.1629 provided that venue was proper in "a county in which all or part of the cause of action arose." *Karpinski v St John Hosp-Macomb Ctr Corp*, 238 Mich App 539, 544-545; 606 NW2d 45 (1999). However, the statute was amended to prevent forum shopping. *Id*. By changing the location for venue from "a county in which all or part of the cause of action arose" to "the county in which the original injury occurred," the Legislature demonstrates its intent to make the place where the injury transpires paramount for venue purposes. *Id*. at 546. "The Legislature chose in the amended statute to adopt language that clearly and unambiguously limits venue to the situs of the original injury when either the defendant or the plaintiff resides, does business, or has a corporate office there." *Dimmitt & Owens Fin, Inc v Deloitte & Touche (ISC), LLC*, 481 Mich 618, 628; 752 NW2d 37 (2008).

To determine the "original injury" for purposes of venue in tort actions, "it is necessary to identify the actual place of occurrence of the damage or injury that gives rise to the plaintiff's cause of action." *Dimmitt*, 481 Mich at 629 (further citation omitted). For purposes of analyzing MCL 600.1629(1), courts must examine the first injury resulting from an act or omission of a defendant to determine where venue is proper. *Id*. at 630. The original injury, not the original breach of the standard of care, determines venue. *Id*.

In *Dimmitt*, the plaintiffs filed a complaint in Wayne County, alleging that the defendants committed malpractice when providing auditing services. *Id*. at 620. The defendants filed a motion for change of venue, asserting that their auditing services had been performed at the plaintiff's offices located in Oakland County. *Id*. The Supreme Court rejected any application

---

[1] The applicability of MCL 600.1641(1) is not before us because it was neither raised in our Court or the trial court.

of a reliance theory for purposes of determining venue, concluding that a present injury, not a potential injury was dispositive:

> At the time of plaintiffs' reliance, plaintiffs suffered only a *potential* injury, namely that their investment decisions based on defendants' negligence *might* turn out to be poor ones that *might* injure plaintiffs. The original injury did not occur until plaintiffs allegedly suffered an *actual* injury as a result of their reliance on defendants' services. The first actual injury plaintiffs allegedly suffered occurred when Dimmitt could not satisfy its financial obligations and was forced to liquidate its assets. Both plaintiffs' principal places of business are in Oakland County, and, therefore, the alleged original injury was suffered in Oakland County. Accordingly, venue was properly laid in Oakland County. [*Id*. at 631-632 (footnotes omitted, emphasis in original).]

In the present case, plaintiffs purchased hotel rooms at defendants' resort as an investment opportunity. The resort is located in Charlevoix County. According to the complaint, the negotiations for the sale took place at the realty office next to the hotel, which was under construction at the time, with additional negotiations occurring over the telephone. Plaintiffs asserted that defendants misrepresented the occupancy rates and projected profits. Further, plaintiffs alleged that defendants would deeply discount blocks of their own vacant rooms in an attempt to generate revenue through concessions at the expense of investor purchased hotel rooms. Defendants filed a motion for change of venue, asserting that the original injury occurred in Charlevoix County, the location of the resort. Plaintiffs opposed the motion for change of venue, alleging that plaintiffs lived and managed their investments in Oakland County, and therefore, the damage to their investment portfolios occurred in Oakland County. Plaintiff further asserted that federal securities law afforded potential plaintiffs liberal choice in their selection of the forum court. The trial court denied defendants' motion for change of venue, concluding that the "first original injury took place when plaintiff suffered financial harm to their real estate portfolio, which plaintiffs managed in Oakland County[.]"

In *Yono v Carlson*, 283 Mich App 567, 568; 770 NW2d 400 (2009), the plaintiffs, a manager of a building project in Leelanau County and the corporate entities, filed suit against the defendants, a reporter for a newspaper printed solely in Leelanau County and the publisher, for defamation for statements concerning the construction project. The plaintiff was a resident of Livingston County and filed suit there, asserting that the publication damaged plaintiffs' reputation there. The defendants filed a motion for change of venue, asserting that the original injury occurred in Leelanau County. *Id*. at 568-569. This Court reviewed the law of other jurisdictions regarding defamation to conclude that the injury occurred in the county in which it was first printed and issued. *Id*. at 571-572. However, this Court also noted that:

> Defendant Leelanau Enterprise, Inc., has its corporate registered office in Leelanau County. It also prepares and prints its newspaper solely in Leelanau County. In fact, even though plaintiffs claim that the people who cancelled their purchase agreements for the Bay View project were not located in Leelanau County, the project is located in Leelanau County and that is where the economic loss was first experienced. Thus, the original injury occurred in Leelanau County. [*Id*. at 572.]

Applying the above principles to the facts at issue, we conclude that the trial court clearly erred in denying defendants' motion for change of venue. *Brightwell*, 487 Mich at 156. Venue is now limited to the situs of the original injury, *Dimmitt*, 481 Mich at 628, because of the Legislature's intention to limit forum shopping, *Karpinsky*, 238 Mich App at 545. An original injury is the first injury resulting from an act or omission by a defendant or the actual place of occurrence of the damage or injury that gives rise to plaintiff's cause of action. *Dimmitt*, 481 Mich at 629-630. Here, the original injury occurred in Charlevoix County where defendants allegedly rented other rooms to the detriment of plaintiffs' investment rooms, and thus where defendants' received rental income that, according to plaintiffs, should have been allocated to their rooms. The original injury therefore occurred in Charlevoix County where the plaintiffs did not obtain the rental income that was brought in but otherwise diverted to another room. Although plaintiffs may feel the consequences of the economic losses in Oakland County where they manage their portfolios, the original injury is where the economic loss was first experienced. *Yono*, 283 Mich App at 572.[2]

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Deborah A. Servitto

[2] We also reject plaintiffs' assertion that federal securities law regarding liberal venue choices should be applied. Michigan statutory and case law govern this case.